

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 0225-02
Bill No.: SCS for SB 1
Subject: Employees - Employers; Labor and Industrial Relations Department; Workers' Compensation
Type: Original
Date: January 30, 2013

Bill Summary: This proposal would modify certain provisions related to the Workers' Compensation program.

FISCAL SUMMARY

ESTIMATED NET EFFECT ON GENERAL REVENUE FUND			
FUND AFFECTED	FY 2014	FY 2015	FY 2016
General Revenue	(Less than \$848,870)	(Less than \$848,870)	(Less than \$848,870)
Total Estimated Net Effect on General Revenue Fund	(Less than \$848,870)	(Less than \$848,870)	(Less than \$848,870)

Numbers within parentheses: () indicate costs or losses.
This fiscal note contains 15 pages.

ESTIMATED NET EFFECT ON OTHER STATE FUNDS			
FUND AFFECTED	FY 2014	FY 2015	FY 2016
Conservation Commission	(Less than \$20,572)	(Less than \$20,572)	(Less than \$20,572)
State Road	(Unknown)	(Unknown)	(Unknown)
Second Injury	More than \$100,000 to (Unknown)	More than \$100,000 to (Unknown)	More than \$100,000 to (Unknown)
Workers' Compensation	(Less than \$2,679,992 to Unknown)	(\$201,161 to Unknown)	(\$203,196 to Unknown)
Other	(Unknown)	(Unknown)	(Unknown)
Total Estimated Net Effect on <u>Other</u> State Funds	More than \$100,000 to (Unknown)	More than \$100,000 to (Unknown)	More than \$100,000 to (Unknown)

ESTIMATED NET EFFECT ON FEDERAL FUNDS			
FUND AFFECTED	FY 2014	FY 2015	FY 2016
Total Estimated Net Effect on <u>All</u> Federal Funds	\$0	\$0	\$0

ESTIMATED NET EFFECT ON FULL TIME EQUIVALENT (FTE)			
FUND AFFECTED	FY 2014	FY 2015	FY 2016
Total Estimated Net Effect on FTE	0	0	0

- Estimated Total Net Effect on All funds expected to exceed \$100,000 savings or (cost).
- Estimated Net Effect on General Revenue Fund expected to exceed \$100,000 (cost).

ESTIMATED NET EFFECT ON LOCAL FUNDS			
FUND AFFECTED	FY 2014	FY 2015	FY 2016
Local Government	(Unknown)	(Unknown)	(Unknown)

FISCAL ANALYSIS

ASSUMPTION

Officials from the **Office of the Secretary of State (SOS)** assume many bills considered by the General Assembly include provisions allowing or requiring agencies to submit rules and regulations to implement the act. The SOS is provided with core funding to handle a certain amount of normal activity resulting from each year's legislative session. The fiscal impact for this fiscal note to the Secretary of State's Office for Administrative Rules is less than \$2,500. The SOS recognizes that this is a small amount and does not expect that additional funding would be required to meet these costs. However, we also recognize that many such bills may be passed by the General Assembly in a given year and that collectively the costs may be in excess of what our office can sustain with our core budget. Therefore, we reserve the right to request funding for the cost of supporting administrative rules requirements should the need arise based on a review of the finally approved bills signed by the governor.

ASSUMPTION (continued)

Officials from the **Office of the Attorney General** assume that any potential costs arising from this proposal could be absorbed with existing resources.

Officials from the **Office of Administration, Division of Budget and Planning (BAP)**, assume this proposal would not result in additional costs or savings to their organization.

BAP officials noted that the proposal would maintain the capped three percent surcharge on every workers' compensation policyholder and authorized self-insurer in order to provide revenue for the Second Injury Fund. The proposal would allow the Division of Workers' Compensation to collect an additional one and one-half percent supplemental surcharge for the Fund for calendar years 2014 through 2020 in order to maintain the fiscal solvency of the Fund. Additionally, the legislation would allow a newly created Second Injury Fund Commission to authorize another one and one-half percent supplemental surcharge for the fund for calendar years 2015 through 2021 to maintain the fiscal solvency of the fund.

If the supplemental surcharges are enacted, this could result in a surcharge of as much as six percent on policyholders and self-insurers. The increased surcharge would positively impact Total State Revenues. The additional surcharges would count toward the 18e calculation. BAP deferred to the Department of Labor and Industrial Relations for an estimate of the fiscal impact.

This proposal would also allow a taxpayer to claim a refund on any overpayment of workers' compensation premium taxes and the second injury fund annual surcharge, in the event a taxpayer owes less in taxes than he or she has paid to the Division of Workers' Compensation. This would Reduce Total State Revenue.

Officials from the **Office of Administration, Division of General Services (DGS)** assume this proposal would allow for a supplemental surcharge for the Second Injury Fund (SIF) tax up to one and one half percent, if necessary to maintain fiscal solvency of the Fund. In addition, the proposal would allow for an additional supplemental surcharge for the SIF up to one and one half percent if necessary to maintain fiscal solvency of the second injury fund.

The proposed legislation could potentially increase the costs to the state's Workers' Compensation Program. In FY 2014, the first supplemental surcharge could have an additional cost to the General Revenue Fund up to \$424,435 and an additional cost to the Conservation Commission Fund up to \$10,286. The second supplemental surcharge could have the same impact.

ASSUMPTION (continued)

The DGS response included an estimate of total additional cost up to \$848,870 for the General Revenue Fund and up to \$20,752 for the Conservation Commission Fund in FY 2014. The DGS response included unknown additional costs for these funds in FY 2015 and FY 2016.

For fiscal note purposes, **Oversight** will include the DGS estimate of \$848,870 in additional cost for each year for the General Revenue Fund and the DGS estimate of \$20,572 in additional cost for each year for the Conservation Commission Fund. In addition, Oversight will include an unknown additional cost for each year for other state funds and for local governments.

Officials from the **Department of Labor and Industrial Relations (DOLIR)** provided the following response.

Interest Rate: Section 287.165, RSMo

The proposal would change the interest rate on unpaid claims to the rate established by the Director of Revenue pursuant to Section 32.065, RSMo. If the interest rate is reduced, the Second Injury Fund would recognize a savings; however, the exact amount is unknown.

Medical Examinations: Section 287.210.1, RSMo

The proposal would authorize the Attorney General's Office (AGO) on behalf of the Second Injury Fund (SIF) to obtain a medical examination report if the employer has not obtained one. According to the AGO, the average cost for a vocational records review, report and deposition is \$1,950 - \$2,250. The average cost for a doctor to conduct a records review, write a report and give a deposition is \$2,450 - \$2,750. The costs can vary greatly based upon the complexity of the case. In 2012, there were 236 Permanent Total Disability (PTD) cases awarded.

Depending on whether or not the employer conducted a medical or vocational examination on these 236 cases, the proposal would allow the AGO to charge the SIF up to $(236 \times \$5,000) = \$1,180,000$ for obtain medical and vocational examinations on these cases. That cost does not consider the number of PTD cases that are currently under review in calendar year 2012 but have not proceeded to a hearing.

ASSUMPTION (continued)

Actuarial Study: Section 287.220.8, RSMo

The proposal would require the Division of Workers' Compensation to have an actuarial study conducted to determine the solvency of the SIF taking into account the balance carried forward from the prior year, appropriate funding levels, and forecast expenditures from the fund. The first actuarial study would be completed prior to July 1, 2013, and a study would be required every year thereafter. The Workers' Compensation Administrative Fund would pay for the study.

In fiscal year 2008, the Department paid PricewaterhouseCoopers, LLP \$90,000 to conduct an extensive review of the SIF. In fiscal year 2011, the Department paid Pinnacle Actuarial Studies \$6,000 for a study of the SIF.

Suspension of Life Payments: Section 287.220.13, RSMo

The proposal would require life payments to an injured employee to be suspended when the employee is able to obtain suitable, gainful employment or be self-employed.

The Department assumes the responsibility to determine eligibility of these requirements would fall under the Division of Workers' Compensation. This additional workload would be handled by an additional attorney and clerical (paralegal).

Implementing the proposed legislation would require the Division of Workers' Compensation to have computer programming changes relating to new expenses for medical costs, suspension of benefits for claimants who receive Social Security benefits, suspension of benefits for claimants who obtain suitable, gainful employment, special assessments for the Second Injury Fund surcharge, and collections. The computer programming costs are unknown at this time.

DOLIR officials also stated that there may also be computer programming costs for amending the current system relating to the Workers' Compensation Administrative Tax and the Workers' Compensation Administrative Surcharge.

ASSUMPTION (continued)

Evidentiary Hearings: Section 287.220.3 (1)(a), RSMo

The proposal includes a new requirement for an Administrative Law Judge (ALJ) to make a determination relating to compensability if an employee has a medically documented preexisting permanent partial disability as a direct result of active military duty in any branch of the United States armed forces or as a result of a preexisting permanent partial disability from a compensable injury.

When a Claim for Compensation filed against the Second Injury Fund proceeds to a hearing, an ALJ would be required to determine whether the preexisting permanent partial disability is from a compensable injury as defined in the proposal prior to issuing an award.

The impact of the legislation on evidentiary hearings, settlements, docket settings and potential appeals is unknown.

Surcharges: Sections 287.715.6 and 287.715.7, RSMo

The proposal would authorize the Division to levy supplemental surcharges. The Division anticipates that the additional responsibility required due to tracking of collections, entering data, monitoring receipts, etc. would require additional staff consisting of an Accountant I at \$29,580/year.

Oversight assumes the surcharges would result in unknown additional revenue greater than \$100,000 per year for the Second Injury Fund and will include that additional revenue in this fiscal note.

Second Injury Fund Commission: Section 287.715.10, RSMo

The proposal would also create the Second Injury Fund Commission, which would consist of four members. Members of the commission would not be compensated but would be reimbursed for expenses. The Division of Workers' Compensation and the Attorney General's office would be responsible for providing professional and clerical assistance as needed.

DOLIR officials stated that the express authorization of the Second Injury Fund Commission would be required for compromise settlements. It is unknown how many such meetings would be needed or the costs associated with those meetings.

ASSUMPTION (continued)

The Department has a similar committee called the Missouri State Unemployment Council. The Department reviewed reimbursement expenses for this group in an effort to estimate the cost of actual expenses for the Second Injury Fund Commission. The estimated annual expense is \$2,500.

Oversight will include the DOLIR estimate of cost for the new council in this fiscal note.

Second Injury Fund Surcharge Refunds: Section 287.745, RSMo

This provision would add an option for taxpayers to get a cash refund of overpaid taxes. If all businesses paying into the Second Injury Fund (SIF) applied for cash refund of overpaid surcharge today, DOLIR officials estimated that the total cost would be unknown up to \$2.5 million.

The DOLIR estimate was based on actual known overpayments from past quarters, plus overpayments due for recent quarters as calculated in the DOLIR computer system.

Oversight notes that these overpayments would result from adjustments to the underlying workers' compensation insurance premiums and self - insured program costs, and will include a cost less than \$2.5 million to the Workers' Compensation Fund for fiscal note purposes for FY 2014. Oversight assumes that any impact in subsequent years would be minimal, since refunds in those years would offset the redemption of credits issued under current provisions.

Oversight also notes that the DOLIR response indicated unknown cost greater than \$100,000 per year for the Workers' Compensation Fund and the Second Injury Fund. The DOLIR response also included three additional employees to administer the benefit suspension (2 FTE) and the additional surcharge provisions (1 FTE). The three additional employees were an attorney, an accountant, and a clerical worker. Oversight assumes the Division of Workers' Compensation would have additional costs for computer programming in addition to costs related to the additional employees and will include an unknown cost for the computer programming.

Oversight assumes this proposal would make changes in the program which would result in savings to the program, and has included in this fiscal note an unknown cost reduction for the Second Injury Fund Program. Since the cost reduction would presumably apply to all employers, Oversight will include the cost reduction for each entity otherwise included in the fiscal note.

ASSUMPTION (continued)

Officials from the **Joint Committee on Administrative Rules** assume this proposal would not have a fiscal impact to their organization in excess of existing resources.

Officials from the **Department of Transportation (MoDOT)** did not respond to our request for information, but assumed a similar proposal in the previous session (SB 807 LR 5698 - 01, 2012) would result in an unknown fiscal impact to their organization.

MoDOT officials stated that the proposal would prohibit injured workers from suing their coworkers. While this bill would increase the amount of Second Injury Fund surcharge, and potentially increase the amount of settlement paid by the employer, it would increase the funding of the Second Injury Fund, making it solvent.

Oversight will include an unknown cost reduction to MoDOT for the language changes, and an unknown increase in cost to MoDOT for the surcharges.

Officials from the **Missouri House of Representatives** assumed a previous version of this proposal would have no fiscal impact on their organization.

Officials from the **Department of Insurance, Financial Institutions, and Professional Registration** stated that they had not been able to fully review this version of the proposal due to time constraints but assumed the changes would not require a change in their previous response which indicated no impact to their organization.

Officials from the **Office of the Governor**, the **Missouri Senate**, the **Office of the State Treasurer**, and the **Department of Revenue** each assume the proposal would not fiscally impact their respective agencies.

<u>FISCAL IMPACT - State Government</u>	FY 2014 (10 Mo.)	FY 2015	FY 2016
GENERAL REVENUE FUND			
<u>Savings-</u> Office of Administration			
Changes in SIF language	Unknown	Unknown	Unknown
<u>Cost-</u> Office of Administration			
Increase in SIF charges	(Less than	(Less than	(Less than
Sections 287.715.6 and 287.715.7	<u>\$848,870)</u>	<u>\$848,870)</u>	<u>\$848,870)</u>
ESTIMATED NET EFFECT ON GENERAL REVENUE FUND	(Less than <u>\$848,870)</u>	(Less than <u>\$848,870)</u>	(Less than <u>\$848,870)</u>
CONSERVATION COMMISSION FUND			
<u>Savings-</u> Department of Conservation			
Changes in SIF language	Unknown	Unknown	Unknown
<u>Cost -</u> Department of Conservation			
Increase in SIF charges	(Less than	(Less than	(Less than
Sections 287.715.6 and 287.715.7	<u>\$20,572)</u>	<u>\$20,572)</u>	<u>\$20,572)</u>
ESTIMATED NET EFFECT ON CONSERVATION COMMISSION FUND	(Less than <u>\$20,572)</u>	(Less than <u>\$20,572)</u>	(Less than <u>\$20,572)</u>

<u>FISCAL IMPACT - State Government</u> (continued)	FY 2014 (10 Mo.)	FY 2015	FY 2016
STATE ROAD FUND			
<u>Savings</u> - Department of Transportation Changes in SIF language	Unknown	Unknown	Unknown
<u>Cost</u> - Department of Transportation Increase in SIF charges Sections 287.715.6 and 287.715.7	<u>(Unknown)</u>	<u>(Unknown)</u>	<u>(Unknown)</u>
ESTIMATED NET EFFECT ON STATE ROAD FUND	<u>(Unknown)</u>	<u>(Unknown)</u>	<u>(Unknown)</u>
SECOND INJURY FUND			
<u>Revenue</u> - Dept of Labor & Industrial Relations Surcharges Sections 287.715.6 and 287.715.7	More than \$100,000	More than \$100,000	More than \$100,000
<u>Cost</u> - Dept of Labor & Industrial Relations Pending cases and future filings	(Unknown)	(Unknown)	(Unknown)
<u>Cost</u> - Dept of Labor & Industrial Relations Medical and vocational examinations	(Unknown)	(Unknown)	(Unknown)
<u>Cost</u> - Second Injury Fund Commission expenses	<u>(\$2,083)</u>	<u>(\$2,550)</u>	<u>(\$2,601)</u>
ESTIMATED NET EFFECT ON SECOND INJURY FUND	<u>More than \$100,000 to (Unknown)</u>	<u>More than \$100,000 to (Unknown)</u>	<u>More than \$100,000 to (Unknown)</u>

<u>FISCAL IMPACT - State Government</u> (continued)	FY 2014 (10 Mo.)	FY 2015	FY 2016
WORKERS' COMPENSATION FUND			
<u>Cost - Department of Labor and Industrial Relations</u>			
Salaries (3.0 FTE)	(\$109,780)	(\$132,450)	(\$133,775)
Employee benefits	(\$55,708)	(\$67,212)	(\$67,884)
Equipment and expense	<u>(\$14,504)</u>	<u>(\$1,499)</u>	<u>(\$1,537)</u>
Total	(\$179,992)	(\$201,161)	(\$203,196)
<u>Cost - Department of Labor and Industrial Relations</u>			
Refunds	(Less than		
Section 268.745	\$2,500,000)	\$0	\$0
<u>Cost - Department of Labor and Industrial Relations</u>			
Computer programming	<u>(Unknown)</u>	<u>(Unknown)</u>	<u>(Unknown)</u>
ESTIMATED NET EFFECT ON WORKERS' COMPENSATION FUND	(Less than \$2,679,992 to <u>Unknown</u>)	(<u>\$201,161 to Unknown</u>)	(<u>\$203,196 to Unknown</u>)
OTHER STATE FUNDS			
<u>Savings - changes in SIF language</u>	Unknown	Unknown	Unknown
<u>Cost - Increase in SIF charges</u>			
Sections 287.715.6 and 287.715.7	<u>(Unknown)</u>	<u>(Unknown)</u>	<u>(Unknown)</u>
ESTIMATED NET EFFECT ON OTHER STATE FUNDS	<u>(Unknown)</u>	<u>(Unknown)</u>	<u>(Unknown)</u>

<u>FISCAL IMPACT - Local Government</u>	FY 2014 (10 Mo.)	FY 2015	FY 2016
LOCAL GOVERNMENTS			
<u>Savings</u> - changes in SIF language	Unknown	Unknown	Unknown
<u>Cost</u> - increase in SIF charges Sections 287.715.6 and 287.715.7	<u>(Unknown)</u>	<u>(Unknown)</u>	<u>(Unknown)</u>
ESTIMATED NET EFFECT ON LOCAL GOVERNMENTS	<u>(Unknown)</u>	<u>(Unknown)</u>	<u>(Unknown)</u>

FISCAL IMPACT - Small Business

This proposal would have a fiscal impact to any small business which is subject to the state Workers' Compensation program.

FISCAL DESCRIPTION

The proposed legislation would modify provisions for the Workers' Compensation Program and the Second Injury Fund.

The proposal would change the interest rate on unpaid benefits to a rate set by the Director of Revenue, equal to the adjusted prime rate charged by banks.

Employees would be required to submit to medical and vocational testing and a vocational rehabilitation assessment scheduled by the Attorney General on behalf of the Second Injury Fund if the employer has not obtained such testing and assessments.

Claims for permanent partial disability would not be allowed against the Second Injury Fund after the effective date of the act unless there exists a medically documented preexisting permanent disability caused by military duty or a preexisting permanent partial disability.

An employer at the time of the last injury would only be liable for the disability resulting from that last injury.

FISCAL DESCRIPTION (continued)

The proposal would limit the ability of the Treasurer to make compromise settlements.

The proposal would require an annual actuarial study of the Second Injury Fund.

Compensation would not be payable from the Second Injury Fund for employees who elect to pursue workers' compensation benefits in another state.

Life payments from the Second Injury Fund would be suspended for injured employees when the employee is able to obtain suitable gainful employment or be self-employed in view of the nature and severity of the injury. Life payments from the Second Injury Fund would also be suspended for an injured employee when the employee becomes eligible to receive Social Security benefits.

The act would establish priorities for paying existing Second Injury Fund liabilities.

The proposal would create the Second Injury Fund Commission composed of the Governor, Attorney General, President Pro Tem of the Senate, and the Speaker of the House of Representatives to approve additional surcharges and authorize certain settlements.

The proposal would create a funding mechanism to bolster the Second Injury Fund when current provisions are inadequate. The Director of the Division of Workers' Compensation could levy a supplemental surcharge not to exceed 1½%, and the Second Injury Fund Commission could assess an additional supplemental surcharge not to exceed 1½% if necessary. The additional surcharges would be sunset based on language in the proposal.

This legislation is not federally mandated, would not duplicate any other program and would not require additional capital improvements or rental space.

SOURCES OF INFORMATION

Missouri Senate
Missouri House of Representatives
Office of the Secretary of State
Office of the State Treasurer
Office of the Attorney General
Office of Administration
 Division of Budget and Planning
 Division of General Services
Department of Insurance, Financial Institutions, and Professional Registration
Department of Labor and Industrial Relations
Department of Revenue



Ross Strope
Acting Director
January 30, 2013